

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 333 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and sd/-
MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No.

STATE OF GUJARAT

Versus

DAHYABHAI L SOLANKI

Appearance:

MR.D.N.PATEL,ADDL.PUBLIC PROSECUTOR for Petitioner
MR FB BRAHMBHATT for Respondents.

CORAM : MR.JUSTICE K.J.VAIDYA and
MR.JUSTICE D.G.KARIA

Date of decision: 27/01/97

ORAL JUDGEMENT(Per Karia,J.):

1. This acquittal appeal arises out of judgment and order dated January 18,1985 passed by the learned

Additional Sessions Judge, Vadodara in Sessions Case No.143/84 acquitting all the accused persons for the offences punishable under Sections 147,148,452,364,302,201 read with section 34 of the Indian Penal Code.

2. The prosecution-case, in short, is that deceased Vimla, who was the daughter of accused No.1, was married with one Bhailalbhai Chhaganbhai of village Manjusar. She was, however, in love with P.W.4, Shankar Khodabhai, and had eloped with him. On July 16, 1984, deceased Vimla and P.W.4 came to their house in Rasulpur and informed P.W.2 Kamlaben Khodabhai, mother of P.W.4 Shankar Khodabhai, that they were married by a registered marriage. It is the prosecution-case that the accused persons had formed an unlawful assembly with the intention and object to do away with deceased Vimla, as she had run away with P.W.4 on account of love-affairs, after her marriage, and particularly P.W.4 Shankar Khoda was of Patanwadia community which was lower community than the Baria community to which the accused persons belonged. In order to fulfil the above object of the unlawful assembly at about 5.00 p.m. on July 17, 1984, all the accused persons armed with Dharia, sticks and other weapons, came to the house of P.W.2, Kamlaben Khodabhai. The accused No.1 admonished the deceased Vimla saying that she had spoiled the prestige of the community by eloping with the person of low community. The deceased Vimla was dragged by the accused persons from the house of P.W.2. She was then tied up with rope. The accused persons are alleged to have caused injury to the deceased and then threw her away in Mahisagar River by tying a big stone to her. The accused No.1 is alleged to have instigated all the other accused persons to cause death of his daughter Vimla and thereupon the accused Nos.2,3 and 5 gave blows with Dharias to the deceased Vimla on her shoulder, neck and accused No.4 is alleged to have given blow with sticks and accused Nos.1 and 3 had tied her leg with the rope and had tied three big stones to it and with the intention to cause her death and also with the intention to screen the offence and destroy the evidence, threw her away in deep water of Mahisagar River. P.W.2 Kamlaben had lodged the complaint, being complaint at Exh.55, at Savli Police Station for the aforesaid offences. Necessary investigations were carried on and on completion thereof the charge-sheet was submitted alleging the aforesaid offences against the accused persons.

3. The charge Exh.3 in respect of the aforesaid offences was read over to the accused persons to which each of them pleaded not guilty.

4. The learned Additional Sessions Judge, Vadodara, recorded the evidence of the prosecution witnesses and on appreciation thereof and the other materials placed before him, ordered to acquit the accused persons holding that the prosecution failed to prove its case beyond reasonable doubt.

5. Mr.D.N.Patel, learned Addl. Public Prosecutor, has taken us through the relevant evidence and the impugned judgment. There is no direct evidence nor any eye-witness to establish the fact that the deceased Vimla was killed intentionally by the accused persons who formed unlawful assembly and in furtherance of the object of such unlawful assembly, she was done to death. Considering the evidence on record, we agree with the reasonings and findings recorded by the learned Judge that the accused Nos. 1 to 8 had not formed any unlawful assembly and each of them could not be said to be the members of such unlawful assembly, the common object of which was to kill deceased Vimla, nor they were armed with Dharias, sticks and other weapons. The evidence of P.W.2 Kamlaben is inconsistent with the evidence of P.W.5 Punjiben Shivani. Complaint Exh.55 is also not proved in accordance with the law.

6. The learned Judge has rightly recorded that the prosecution had failed to prove beyond reasonable doubt that the accused Nos. 1 to 8 had entered the house of Shankarbhai Khodabhai, P.W.4, and they were armed with deadly weapons such as Dharia, sticks, etc. with intention to commit offence, nor can it said that the offence under section 452 of the Indian Penal Code qua the accused Nos. 2 and 3 was established. Similarly, the prosecution has also failed to establish the guilt for the offence under section 452 read with sec.114 of the Indian Penal Code so far as the remaining accused persons are concerned. It is also not proved beyond reasonable doubt that the accused Nos.1 to 8 as the members of the unlawful assembly and with a view to fulfil the common unlawful object, had dragged the deceased Vimla and had tied her with stones and further with the intention to kill her, had thrown her in deep water of River Mahisagar. There is, therefore, no cogent or reliable evidence to hold that the accused Nos. 1 to

8 or any of them committed offences punishable under section 364 and sec.364 read with section 148 of the Indian Penal Code. Similarly, the prosecution has not been able to establish beyond reasonable shadow of doubt that the accused Nos. 2 to 5 with the intention to cause death of Vimla and with the knowledge that if the blows with Dharia are given to the deceased Vimla on her head, neck, it would result in injuries sufficient to cause her death in the ordinary course of nature and thereby each of them cannot be said to have committed offence punishable under section 302 of the Indian Penal Code, nor the remaining accused persons could be said to be members of the unlawful assembly with a view to fulfil the common object of committing offences under section 302 read with section 149 of the Indian Penal Code. The prosecution has not established its case of destroying evidence against the accused persons and thereby proving offence punishable under section 201 read with sec.34 of the Indian Penal Code. In this connection, we agree with the findings of the learned Judge recorded in paras 16 and 17 of the impugned judgment. No case is made out to interfere with the order of acquittal.

7. Apart there being no cogent or convincing evidence for convicting any of the accused persons, this being an acquittal appeal, this Court, in exercise of its power in dealing with acquittal appeal, should be slow to interfere with the order of acquittal, in view of the settled legal position that when two views are possible, the view in favour of the accused has to be accepted.

8. In the above view of the matter, there is no substance in the appeal. It is, therefore, dismissed. The bail-bonds of the accused persons shall stand cancelled.
